

UNITED STATES COURT OF APPEALS

AUG 23 2002

FOR THE TENTH CIRCUIT

PATRICK FISHER
Clerk

RODNEY ALAN GUNDERSON,

Plaintiff - Appellant,

v.

JUDY UPHOFF, individually and in her official capacity as Director of the Wyoming Department of Corrections; JIM DAVIS, individually and in his official capacity as the Wyoming Department of Corrections Health Services Administrator; JAMES FERGUSON, individually and in his official capacity as the Warden of the Wyoming State Penitentiary; RICK SHINKLE; BEVERLY SHEAR; WAYNE MARTINEZ, Correctional Officers, in their individual capacities; DR. FERGUSON, former contract physician for the Wyoming State Penitentiary; JOHN PEERY, Wyoming State Penitentiary Contract Health Care Unit Manager; DR. KENNETH WILLIAM SCHULZE, contract Health Care Provider for Wyoming State Penitentiary; DR. PAUL LONG, contract physician for Wyoming State Penitentiary; CINDY FAULKNER, contract nurse supervisor for Wyoming State Penitentiary; JAN JONES, contract nurse for Wyoming State

No. 01-8056
(D.C. No. 97-CV-35-B)
(D. Wyoming)

Penitentiary; NANCY SPERLING, former contract nurse for Wyoming State Penitentiary, in their individual capacities; WEXFORD HEALTH SOURCES, INC., contract Health Care Provider, Wyoming State Penitentiary; RONALD G. RUETTIGERS, Wyoming State Penitentiary Associate Warden; KEN KENNEDY, Wyoming State Penitentiary counselor; CORPORAL BISHOP; TOMMY BUSTOS; MIKE KINGSLEY, Correctional Officers at Wyoming State Penitentiary, in their individual capacities; JACK BATTS; MARK SIMONS; ALLEN KLIENFELTER; MIKE KINGERY,

Defendants,

and

WILLIAM HETTGAR, individually and in his official capacity as Associate Warden of the Wyoming State Penitentiary; LT. PAINTER; SGT. GARY HALTER; BLAKE SMITH; GEORGE REEDY; SCOTT ABBOTT; JOHN R. HOLLOWAY; BRETT CHARLES TULLY; MARK BROWN; WENDY HALTER; MIKE HOWARD; WILLIAM BURR,

Defendants - Appellees.

ORDER AND JUDGMENT *

Before **O'BRIEN** and **PORFILIO** , Circuit Judges, and **KANE**, ** Senior District Judge.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant Rodney Alan Gunderson, a prisoner of the State of Wyoming appearing pro se, appeals from a jury verdict in favor of appellees on his claims of excessive force, unconstitutional conditions of confinement, and lack of access to the courts filed under 42 U.S.C. § 1983. Appellant's claims arose when appellees restrained him to cut his hair in accordance with prison policy and then placed him in administrative segregation immediately after the haircut because of his resistance. Appellant asserted that he resisted the haircut based on his religious belief that he should not cut his hair.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** The Honorable John L. Kane, Senior District Judge, United States District Court for the District of Colorado, sitting by designation.

On appeal, appellant makes arguments related to default, discovery, witnesses, judicial partiality, and housing during the trial. We have reviewed the briefs in light of the record on appeal and conclude that appellant's claims of error are waived or are without merit.

The judgment is AFFIRMED. Appellant is reminded that he is obligated to continue making partial payments until the filing fee is paid in full. Appellant's motion for recusal of Judge Brimmer and Magistrate Judge Beaman is denied. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Circuit Judge